

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHSORE SHEET METAL, INC.,

Case No. 2:15-cv-01349 MJP

Plaintiff,

v.

SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION,  
LOCAL 66,

Defendant.

***PLAINTIFF'S MOTION FOR  
RECONSIDERATION FOR THE  
LIMITED PURPOSE OF GRANTING  
DEFENDANT'S PRIOR REQUEST FOR  
STAY ON THE CONTRACTUAL  
DAMAGES CLAIM***

**Noted on Motion Calendar: June 6, 2016**

Pursuant to Local Rule 7(h), Plaintiff Northshore Sheet Metal, Inc. ("Plaintiff" or "Northshore") requests a motion for reconsideration for the limited purpose of modifying its order to grant Defendant Sheet Metal Workers, Local 66's ("Defendant" or "Local 66") prior motion for stay on the breach of contract claim pending mediation and arbitration.

On May 23, 2016, the Court *sua sponte* issued a stay on the current proceedings. The stay was based on the parties failure to mediate and arbitrate the fringe benefits issue required in the Court's September 4, 2015 Order. Several motions were before the Court (Dkts. 50, 51, 52 and 67) and dismissed as moot. Dkt. 71. One of those motions was filed

*Defendant's Motion for Reconsideration for  
Limited Purpose of Granting Plaintiff's Request  
for Stay - Page 1*  
Case No. 15-cv-01349 MJP

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1 by the Defendant seeking a stay in the proceedings pending mediation and arbitration of  
 2 Plaintiff's first cause of action, breach of the labor agreement. Dkt 51. Plaintiff requests  
 3 that the Court amend its order to stay the proceedings for the limited purpose of granting this  
 4 motion filed by the Defendant, ordering the parties to proceed to mediation and arbitration  
 5 on that claim as well. Dkt. 51-1.

6 Plaintiff does not dispute the Court's power to stay the proceedings in this matter.  
 7 The power to grant or define a stay in pending litigation is "incidental to the power inherent  
 8 in every court to control the disposition of cases on its docket." *Landis v. North Am. Co.*,  
 9 299 U.S. 248, 254-57 (1936). "Accordingly, federal district courts have broad discretion to  
 10 stay proceedings in the interest of justice." *Little v. City of Seattle*, 863 F.2d 681, 685 (9<sup>th</sup>  
 11 Cir. 1988). The stay should be amended though to include Defendant's motion. The facts  
 12 of this case, the interest of justice and Plaintiff's request is consistent with equity and  
 13 judicial economy.

14 Plaintiff's motion is an attempt to slightly modify the Court's motion for stay.  
 15 Because of that fact and the tight timeframes required by the local rules for a motion for  
 16 reconsideration, it is being brought as a motion to reconsider. In general, motions for  
 17 reconsideration are disfavored. LR 7(h)(1). In this matter, however, a modification to the  
 18 order is warranted because certain relevant facts were not known to the Court, and  
 19 moreover, the modification promotes justice, equity and judicial economy.

21 **BRIEF FACTUAL BACKGROUND**

22 Plaintiff will not waste the Court's time with a complete recitation. Docket 60  
 23 provides Plaintiff's background version into the selection of a mediator, and the reasons for  
 24 delay. There are though certain facts that were not before the Court that merit review.  
 25

1           On March 17, 2016, Rick Omata was selected as a mediator. *Hilgenfeld Decl.* Due  
 2 to everyone's schedule the earliest mutually agreeable date was May 9, 2016. The Court  
 3 was subsequently informed of the mediation date. Dkt. 65.

4           On May 9, 2016, the Parties did mediate the fringe benefit claims before Rick  
 5 Omata. *Hilgenfeld Decl.*, ¶5. The parties spent an entire day in mediation. Despite this, the  
 6 Union failed to even present an initial offer. *Id.* At the end of the day, Northshore informed  
 7 Rick Omata that the mediation was complete, and it was prepared to proceed to arbitration.  
 8 *Id.* Northshore was willing to consider future offers from the Union, if there were any, and  
 9 would agree that Mr. Omata could continue working to facilitate those offers. *Id.*  
 10 Northshore would not agree to continue mediation though in lieu of delaying arbitration. *Id.*

11           On May 10, 2016, Northshore requested that the parties' proceed to arbitration on the  
 12 fringe benefits matter. *Hilgenfeld Decl.*, Exh. 1.

13           Also on May 10, 2016, Northshore prepared a draft letter for the Court. *Hilgenfeld*  
 14 *Declaration*, Exh. 2. Northshore sent this letter to Defendant's attorney, Dan Hutzenbiler,  
 15 requesting agreement or comment. The letter simply informed the Court that the parties'  
 16 attended mediation, and were preceding to arbitration pursuant to the Court's September 4  
 17 Order. *Id.*

18           On May 18, 2016, Defendant informed Northshore that it considered mediation still  
 19 ongoing and refused to agree to arbitration. *Hilgenfeld Decl.*, ¶ 8.

20           On May 20, 2016, Northshore clarified that mediation on the fringe benefits issue  
 21 had been completed. *Hilgenfeld Decl.*, Exh. 3. Mediation was completed after a full-day  
 22 where the Union failed to even present an initial offer. *Hilgenfeld Decl.*, ¶ 5. The parties  
 23 needed to proceed to arbitration on that issue as the January settlement agreement requires.  
 24

1 Northshore would be willing to consider a new mediation that also included the damages  
 2 associated with the Union's strike issue. Local 66 has not agreed to this proposal.  
 3

4 The parties were working through this issue when the Court issued its *sua sponte*  
 5 order. The Court was not aware of these facts when it issued its May 23, 2016 Order.

6 **EQUITY AND JUDICIAL ECONOMY SUPPORT PLAINTIFF'S REQUEST**

7 Plaintiff does not seek to lift the Court's stay. Plaintiff simply requests that the  
 8 Court grant Defendant's prior motion related to staying the proceedings on the contractual  
 9 damages claim. If the Court were to grant Plaintiff's request to amend its Stay, the  
 10 contractual damages issue would proceed to mediation / arbitration. Plaintiff's request is  
 11 rooted in expediting this matter, and bringing the issues to resolution as quickly as possible.  
 12 This request is consistent with the purpose of staying an action. *American Concept v. Irsay*,  
 13 1985 WL 2991 (N.D. Ill. 1985) (not reported) (District Court compelled arbitration of all  
 14 arbitral disputes, staying non-arbitral disputes, "in the interest of saving time and effort for  
 15 itself and litigants."); *Kircher v. Putnam Funds Trust*, 2007 WL 1532116, at \*2 (S.D. Ill.  
 16 2007) (not reported) (finding the power to stay a proceeding was inherently within the  
 17 court's power to the extent it is "consistent with equity and judicial economy").

18 Plaintiff's request to modify the Court's stay would promote justice and equity  
 19 between the parties because both the Defendant's claim for failure to pay fringe benefits,  
 20 and the Plaintiff's claim for breach of contract would be brought before the same  
 21 decisionmaker. The same facts and issues would be presented before the mediator and  
 22 arbitrator. Those claims would also be heard at the same time so neither party would gain  
 23

24

25

1 an advantage in delaying the proceedings in one matter while the other proceeding is  
 2 delayed.<sup>1</sup>

3 Plaintiff's request also supports judicial economy. Plaintiff's breach of contract  
 4 claim would no longer be on the Court's docket. As it stands now, once the fringe benefits  
 5 issue is mediated and arbitrated, Plaintiff's contractual damages claim, and unlawful  
 6 secondary interference claim will be before the Court, regardless of the arbitrator's decision.  
 7 In short, judicial economy promotes Plaintiff's request.

8 Plaintiff remains reticent that Local 66 does not intend to actually mediate / arbitrate  
 9 this issue.<sup>2</sup> See, e.g., *Carpenters Health & Sec. Trust of W. Washington v. NW Drywall*  
 10 *Serv., Inc.*, No. 3:13-CV-05305-RBL, 2014 WL 465816 (W.D. Wash. 2014). That said,  
 11 Plaintiff is prepared to permit an arbitrator to make the determination as to whether the  
 12 matter is properly before him/her. The need for a quick, expedient resolution outweighs that  
 13 potential risk.

14

### CONCLUSION

15 Plaintiff respectfully requests that the Court amend its May 23, 2016 Order to  
 16 include ordering the mediation and arbitration of Plaintiff's breach of contract claim. This  
 17

18     <sup>1</sup> Northshore certainly recognizes that all parties bear responsibility in adhering to the Court's orders.  
 19 Northshore should have been more aggressive with requiring timely adherence to its requests to choose a  
 20 mediator, and later an arbitrator. This said, it appears, at least to Northshore, that Defendant has actively  
 21 attempted to stall the process. This appears evident by attending a full day's mediation, and the party  
 22 requesting money fails to even provide an initial offer, and then refuses to proceed to arbitration. *Hilgenfeld*  
 23 *Decl.*, ¶5. This action was followed by a letter distributed to Northshore job sites by the Union, inferring that  
 24 Northshore's lawsuit was stayed because of Northshore's failure to comply with the Court Order. *Id.*, Exh. 4.  
 25 If the Court were to grant Defendant's request to stay the proceedings pending mediation and arbitration of the  
 damages claim, then the parties would be on equal footing as to the need for quicker resolution. Northshore  
 opposed the initial request, in part, because it is doubtful that an arbitration hearing could have occurred prior  
 to the original trial date. That reasoning is no longer valid.

2 Northshore is also hesitant to relinquish its right to a jury trial on this issue. Expediency and quick resolution,  
 however, are most paramount. In effect, Northshore is withdrawing its prior opposition to Defendant's motion  
 to stay for the sole purpose of this motion.

amendment is simply granting Defendant's initial motion (Dkt. 51), and would require the parties to jointly proceed on the claims (fringe benefits / contractual damages), along the same path. Plaintiff's request, as stated, is supported by equity, justice and judicial economy. For all of the aforementioned reasons, the Court should grant Plaintiff's request to modify its order to stay the proceedings.

Respectfully Submitted this 6<sup>th</sup> day of June, 2016.

By: /s/ Christopher L. Hilgenfeld

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of June, 2016, I electronically filed the foregoing

**MOTION FOR RECONSIDERATION FOR THE LIMITED PURPOSE OF  
GRANTING THE UNION'S REQUEST FOR STAY** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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